



March 12, 1999

Ms. Kelly Fletcher Schurr  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR99-0704

Dear Ms. Schurr:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122861.

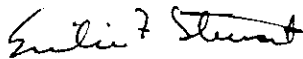
The Fire Department of the City of Dallas ( the "city") received a request for: (1) the disciplinary histories of four named individuals and fire department employees who have been arrested for the offense of driving while intoxicated ("DWI"); (2) the name, date and discipline imposed on fire department employees who have been arrested for DWI more than once; and (3) a list of fire department employees disciplined in the past five years for criminal violations. You state that, with the exception of the material contained in Exhibit C, you will release the requested information to the requestor. You claim that the requested information on Exhibit C is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court for information claimed to be protected under the doctrine of common-law privacy in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931(1977). Section 552.101 of the Government Code applies to information made confidential by the common-law right to privacy. *Id.* Some, but not all, of the information in Exhibit C is excepted from public disclosure by common-law privacy. Information may be withheld under section 552.101 in conjunction

with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* This office recognizes a privacy interest in drug test results of public employees. *See* Open Records Decision Nos. 594 (1991) (suggesting identification of individual as having tested positive for use of illegal drug may raise privacy issues), 455 at 5 (1987) (citing *Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d. 1136 (3rd Cir. 1986)). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy, *see* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the information in Exhibit C that must be withheld under common-law privacy. The remaining, unmarked information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 122861

Enclosures: Marked documents

cc: Mr. John Haring  
Lyon, Gorsky, Basket, & Haring L.L.P.  
2501 Cedar Springs at Fairmount, Suite 250  
Dallas, Texas 75201  
(w/o enclosures)